IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISIDICTION

WRIT PETITION NO.476 OF 2005

Nishikant Shivpad Nashte ..Petitioner

Vs.

Ramanlal Chunilal Maniar
and Ors. ..Respondents

....

Shri.P.D.Dalvi for Petitioner

....

CORAM : B.H.MARLAPALLE,J.

DATE : FEBRUARY 23,2005

P.C.:

1. Heard Mr.Dalvi, the learned counsel for the petitioner who has filed RCA No.137 of 1995 and the same is pending before the District Court at Kolhapur. In the said appeal, an application at Exh. 49 came to be filed by the appellant for amendment on or about 15.7.2004 and proposed to add para nos.6A and 6B in the plaint. The respondents by filing their say at Exh.52, opposed the application and after hearing both the parties, the learned VIIIth Ad-hoc Addl.Dist. Judge at Kolhapur rejected the amendment application and hence, this petition.

2. In the say filed at Exh.52, the respondents pointed out that the original defendant nos.1 and 2

had died even during the pendency of the suit i.e. RCS No. 787 of 1986. The defendant no.1 died on 25.4.1990 whereas defendant no.2 died on 4.2.1992. Similarly, the legal heir of defendant no.2 impleaded as defendant no.4 Smt.Rajulbai also died sometimes in the year 2002. The employment status of the adopted son was known to the plaintiffs even when the suit was filed. No steps were taken for amendment of the plaint till the suit was decided on 25.10.1994. The appeal remained pending for about 9 years and thereafter, the application at Exh.49 was moved for amendment. If the Court below noted that the amendment sought for was to delay the final decision in the appeal, it was so justified. The reasoning set out by the lower appellate Court in rejecting the application at Exh.49 cannot be termed as perverse or grossly erroneous calling for interference in this petition under Article 227 of the Constitution of India.

3. Hence, the petition is rejected summarily.

[B.H.MARLAPALLE,J.]